

1 Tara J. Schleicher, WSBA #26884  
2 Jason M. Ayres, WSBA #39141  
3 Foster Garvey P.C.  
4 618 West Riverside Avenue, Suite 300  
5 Spokane, WA 99201  
6 Telephone: (503) 228-3939  
7 Facsimile: (503) 226-0259  
8 tara.schleicher@foster.com  
9 jason.ayres@foster.com  
10

11 UNITED STATES BANKRUPTCY COURT  
12 FOR THE EASTERN DISTRICT OF WASHINGTON  
13

14 In re  
15 CLAAAR CELLARS, LLC,  
16 Debtor.

Lead Case No. 20-00044-WLH11  
(Jointly Administered)

Case No. 20-00045-WLH11  
(Jointly Administered)

17 In re  
18 RC FARMS, LLC,  
19 Debtor.

**HOMESTREET BANK'S OBJECTION  
TO THE CONFIRMATION OF  
DEBTORS' JOINT PLAN OF  
REORGANIZATION**

20 HomeStreet Bank ("HomeStreet") hereby submits this objection to the confirmation of  
21 Debtors' Joint Plan of Reorganization [ECF 343] (the "Plan"). HomeStreet objects to the Plan  
22 because the Debtors cannot meet the requirements of 11 USC §1123 or 11 USC §1129 as  
23 discussed in detailed below. The Debtors have no real means to implement the Plan. Further,  
24 all future operations are based on speculation and are unsupported by the historical or current  
25 financial state of the Debtors. Indeed, the Debtors already failed to meet their projections and  
26 sales detailed in their Disclosure Statement. The Plan simply is not feasible and, if confirmed,  
will only allow the Debtors to continue the same course of business, which has resulted in  
substantial losses for the last several years and pre-COVID. This Objection is supported by the

HOMESTREET BANK'S OBJECTION TO THE  
CONFIRMATION OF DEBTORS' JOINT PLAN OF  
REORGANIZATION - 1

FOSTER GARVEY P.C.  
618 West Riverside Avenue, Ste 300  
Spokane, Washington 99201  
(503) 228-3939

1 following points and authorities, the records and files in this proceeding and the Declaration of  
2 Tara J. Schleicher ("Schleicher Dec.").

### 3 LEGAL ANALYSIS

#### 4 A. Failure to comply with applicable provisions of Title 11 (11 USC §1129(a)(1)).

5 Under 11 USC § 1129(a)(1), the plan must comply with the "applicable provisions of  
6 [title 11]." This requirement has been interpreted by courts as requiring that the plan comply  
7 with the provisions relating to the plan's internal structure and drafting, such as §§ 1122 and  
8 1123 governing classification and contents of plans. *See, e.g., In re PC Liquidation Corp.*, 383  
9 BR 856, 866 (NDNY 2008) ("Section 1129(a)(1) has been interpreted to be applicable to  
10 provisions of the Bankruptcy Code pertaining to the form and content of reorganization plans").

#### 11 1. Section 1123(a)(1) – Improper Classification of Claims.

12 The Debtors' Plan fails to meet Bankruptcy Code's requirements governing  
13 classification of claims. Section 1123(a)(1) provides that "a plan shall (1) designate, subject to  
14 section 1122 of this title, classes of claims, **other than** claims of a kind specified in section  
15 507(a)(2) . . ." (emphasis added). The Debtors' Plan fails comply with 1123(a)(1) because the  
16 Debtors' Plan classifies two claims of a kind specified in section 507(a)(2). Class 1 under the  
17 Debtors' Plan is for administrative expenses under section 507(a)(2) (Plan, p. 11). Class 2  
18 under the Debtors' Plan is for US Trustee fees under section 507(a)(2). (Plan, p. 12). Thus, the  
19 Debtors' Plan fails to comply with section 1123(a)(1).

#### 20 2. Section 1123(a)(5) – Lack of Identifiable Means of Implementation.

21 Section 1123 of the Bankruptcy Code requires that a chapter 11 plan proponent  
22 "provide adequate means for the plan's implementation. . . ." 11 USC § 1123(5). The Debtors'  
23 Plan fails to meet that requirement for several reasons.

24 First, the Debtors' Plan fails to meet the requirements of 1129(a)(1) because it does not  
25 provide "adequate" means for plan implementation. Rather, the only discussion of  
26 implementation is, at least with respect to HomeStreet's claim, vague, ambiguous and

1 unspecified in any detail. The Debtors' Plan only provides that "[t]he Reorganized Debtor **may**  
2 pay the HomeStreet Claim through **any method available** to the Reorganized Debtor including  
3 operations, sale, refinance, equity infusion or otherwise." (Plan, p. 14). Such a statement is  
4 void of any specific or really even any general method for means implementation. The Debtor  
5 "may" pay the HomeStreet Claim. Given the lack of any plan for repayment, it likely will not.  
6 The Debtors' principal, Robert Whitelatch, testified at his deposition on October 14, 2020 (the  
7 "Deposition"), that: (a) he had no prospect for refinancing at this time and was not pursuing it  
8 currently; (b) he admitted that operations alone simply would not suffice to pay the creditors'  
9 claims; (c) he admitted that he has not listed the property of the estate for sale even though no  
10 objections were filed to his motion to employ a broker; (d) he stated that the Debtors' principals  
11 will not be infusing any equity to perform the Debtors' Plan; (e) he admits that, despite his  
12 broker's advice, he wants to list the properties at a price that could be viewed by the market as  
13 overpriced; and (f) he has no set time to list the property for sale. Such vague references and  
14 admissions regarding any real plan does not provide the adequate means required by 1123.

15 Second, the Debtors' Plan does not provide adequate means of implementation because  
16 it lists hundreds of thousands of dollars in grape or "fruit" income that simply will not be  
17 coming in. Mr. Whitelatch testified at his deposition that RC Farms, LLC ("RCF") has not  
18 entered into even one contract for the sale of grapes to any third party in 2020.<sup>1</sup> Yet, the  
19 Debtors' Disclosure Statement represents that "only a portion of the wine grapes grown by the  
20 Reorganized Debtor will be utilized by the Reorganized Debtor to produce new inventory" and  
21 that "remainder of the grape crops (between \$110,000 and \$145,000) will be sold to third  
22 parties to generate income under the Plan. Thus, as indicated by the recent dumping issue  
23 whereby the Debtors are dumping a third of their inventory, because RCF could not sell grapes

24 \_\_\_\_\_  
25 <sup>1</sup> Mr. Whitelatch testified he may have a sale of grapes that could occur in the next few weeks,  
26 but only for \$9,600 to \$16,000 gross. That is 2% to 3% of the projected amount of grape  
revenue for 2020. Mr. Whitelatch testified that the "juice" sales (unfermented juice from the  
grapes) is *de minimis*.

1 to third parties, Claar must now take the grapes in contradiction to how the Debtors represented  
2 they would operate. Under the Debtors' Plan, Claar and RCF would be merged and no income  
3 will be produced in 2020 for the sale of grapes, which means there is no income from  
4 "Fruit/Juice Sales" in the Debtors' Plan projections. Such a lack of fruit sales or income from  
5 the sale of fruit dooms the Debtors' Plan and, obviously, does not provide adequate means for  
6 implementation.

7 Additionally, the Debtor's Plan states that Circle Ground is to be sold on or before  
8 September 30, 2021 and if not, then sold at auction no later than December 31, 2021. (Plan, pp.  
9 15 and 16). However, the Circle Ground is part of Taylor Flats, which is the subject of the  
10 adequate protection lien granted to HomeStreet by the Debtors. The Plan provides for the  
11 retention and utilization of the net proceeds of the Circle Ground to fund the Debtors'  
12 operations, "including payments required by the Plan." Thus, the proceeds of the Circle  
13 Ground are to be used to pay all plan payments with only \$148,366 to be paid to HomeStreet.  
14 HomeStreet believes that its adequate protection lien is significantly higher than that. Yet,  
15 proceeds from its collateral may be used to pay all creditors. That is improper and violates  
16 1122(a), which requires that debtors place a claim in a particular class that is substantially  
17 similar to the other claims of such class. This use of the proceeds from HomeStreet's collateral  
18 for its adequate protection lien violates that provision by treating HomeStreet's secured claim  
19 like the Debtors' other separately classified unsecured and secured creditors.

20 B. The Debtors fail to comply with the provisions of Title 11 and the Debtor's Plan has not  
21 been proposed in good faith. (11 U.S.C. § 1129(a)(2)-(3)).

22 A bankruptcy court shall confirm a plan only if the debtor shows that it has "complie[d]  
23 with the provisions of [the Bankruptcy Code]," 11 U.S.C. § 1129(a)(2), and that its plan has  
24 been "proposed in good faith and not by any means forbidden by law," 11 U.S.C. § 1129(a)(3).  
25 Because bankruptcy courts frequently analyze potential violations of sections 1129(a)(2) and  
26 (a)(3) together, certain common themes appear routinely in the case law. *In re Dunlap Oil Co.*,

1 *Inc.*, 2014 WL 6883069, at \*4 (9th Cir. B.A.P. Dec. 5, 2014). Courts have focused on  
2 compliance by the plan proponent with the disclosure and solicitation requirements of sections  
3 1125 and 1126. 7 Collier on Bankruptcy P 1129.02 (16th 2020).

4 Additionally, case law in the Ninth Circuit makes it clear that a debtor's good faith (or  
5 lack thereof) is a holistic inquiry based on the "totality of the circumstances" in the bankruptcy  
6 case. *In re Deed & Note Traders, LLC*, 2012 WL 1191891, at \*10 (9th Cir. B.A.P. Apr. 5,  
7 2012). A lack of good faith may be premised on the debtor's failure to exhaustively identify  
8 and/or pursue all potential sources of creditor recoveries. *In re Hamilton*, 2018 WL 3637905,  
9 at \*9 (9th Cir. B.A.P. July 31, 2018). A lack of good faith may also be based on the debtor's  
10 poor communication or engagement with creditors. *In re McInerney*, 487 B.R. 468, 476-77  
11 (Bankr. E.D. Mich. 2012).

12 In this case, since the disclosure statement phase, HomeStreet has learned troubling  
13 things about the Debtors' failure to disclose full, complete and relevant information to creditors.  
14 First, HomeStreet learned that the Debtors considered one-third of its wine inventory to be  
15 worth nothing while continuing to assert that it was worth \$1,276,670.94 on its September 30,  
16 2020 operating report – a number that has virtually remained unchanged since the schedules  
17 were filed, after taking into account the sale reports on the September 30, 2020 operating  
18 report. The values stated on Claar's wine inventory list painted a very different picture of the  
19 inventory value for the wines that Claar obtained authority to dump -- over \$400,000 worth.  
20 This only came to light during discovery conferral call on October 9th, well after responsive  
21 documents were due from the Debtors on that point. If Claar thought its wine inventory was  
22 over \$400,000 overstated, that should have been disclosed in the disclosure statement and prior  
23 to solicitation. That failure to disclose is the epitome of "poor communication or engagement  
24 with creditors" and constitutes bad faith.

25 Additionally, the Debtors have overstated accounts receivable as well. Claar's largest  
26 client, Naked Winery, with over 63% of its accounts receivable, is not truly accounts receivable

1 or sales at all. Mr. Whitelatch testified during his deposition that of the current amount of  
2 accounts receivable listed in his September operating report, \$119,000 of the \$139,928 (85%)  
3 listed as an accounts receivable from Naked Winery was not due. Moreover, Mr. Whitelatch  
4 stated that if Naked Winery chose not to pick up any of the \$119,000 worth of the "order," that  
5 Claar had no right to collect it from Naked Winery. Simply put, Claar's representation that it  
6 has current accounts receivable is overstated by 77%. That carries over into an overstatement  
7 of the sales report as well.

8 These overstatements of inventory, accounts receivable and sales are not "harmless  
9 error" and significantly affect creditors' rights, thus violating 11 USC §1129(a)(2).

10 Another example of the Debtors' failure to communicate or engage with creditors,  
11 despite a court order, is the Debtors' failure to provide the required information to the  
12 independent CPA as set forth in the Final Cash Collateral Order [ECF 177] at page 9. As  
13 previously stated to this court, the Debtors willfully failed to provide Ms. Zalaznik with the  
14 information she needed to restate the financial statements. The Debtors are flouting this court's  
15 order with no repercussion. That is bad faith.

16 With respect to 11 USC §1129(a)(3), the proposed transfer of the Trust Property to the  
17 Reorganized Debtor without any consideration is a voidable transfer under Washington law.  
18 RCW 19.40.051 provides that a transfer is voidable by a current creditor of the transferor when  
19 the transfer is made "without receiving a reasonably equivalent value in exchange for the  
20 transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent  
21 as a result of the transfer or obligation". Mr. Whitelatch testified during his deposition that the  
22 only consideration that will be given to the Trust for the Trust Property is "love and affection."  
23 That is obviously not reasonably equivalent value for the Trust Property and is voidable as to  
24 HomeStreet, whose claim against the Trust arose prepetition and a receiver is currently  
25 appointed for the Trust Property. The proposed transfer is pursuant to a "means forbidden by  
26 law."

1 Further, the Plan is proposed by a means forbidden by law because the Debtors state  
2 summarily that an unspecified person or persons will "revoke the Whitelatch Trust and transfer  
3 the 27-acre parcel with shop and house (the "Trust Property") into the Reorganized Debtor,  
4 Claar Cellars, LLC." The Debtors fail to inform creditors that they are prohibited from doing  
5 so (i) under Washington law, (ii) by virtue of the fact that a receiver, Critical Point Advisors,  
6 LLC ("the "Receiver") has control over the Trust and the Trust Property under the order entered  
7 by Franklin County Superior Court on December 23, 2019 (the "Receivership Order"), and (iii)  
8 such action would violate the due on sale clause in the mortgage granted by the Trust to  
9 HomeStreet and would trigger the immediate payment of all amounts due by the Trust to  
10 HomeStreet. Under RCW 11.98.070 (12), (18) and (38), termination of the Whitelatch Trust  
11 (assuming for the sake of argument, it can be terminated when the Receiver has been appointed  
12 for the Trust), does not result in a transfer of the Trust Property to the Whitelatches individually  
13 to do what they wish with it. Rather, under RCW 11.98.070 (12) and (18), because the Trust  
14 mortgaged the Trust Property to HomeStreet, it will remain in the Trust and subject to that  
15 mortgage under RCW 11.98.070(38) and, further, subject to the Receiver's control under the  
16 Receivership Order.

17 C. The Debtor's Plan fails to comply with treatment of professional fees under 11 USC  
18 §1129(a)(4)).

19 Section 1129(a)(4) requires that the court exercise substantive control over fees and  
20 costs related to confirmation and the chapter 11 case, with section 330(a) requiring that all  
21 professionals employed by the estate have their employment approved and fees reviewed.  
22 COLLIER ON BANKRUPTCY, ¶1129.02[4].

23 The requirements are twofold: first, disclosure; and second, reasonableness. *Id.*

24 With respect to disclosure, there is no disclosure of the amount of any retainers held by  
25 the Debtors' professional, if any or the amount of fees incurred as required on the operating  
26 reports (at least by Claar's counsel).



1 With respect to reasonableness, the Plan calls for payment of the professionals' fees  
2 from HomeStreet's adequate protection collateral (the Taylor Flats Circle Ground) without any  
3 process for determining HomeStreet's secured interest in the proceeds of that property.  
4 Payment of administrative expenses from a secured creditor's collateral violates the Code and,  
5 thus is not reasonable. For that reason as well, the Plan fails to comply with 1129(a)(4).

6 D. The Debtor's Plan fails to Comply with 11 U.S.C. § 1129(a)(5)

7 Section 1129(a)(5)(A)(i) requires the proponent of a plan to disclose the identity of  
8 certain individuals who will hold positions with the debtor or its successor after confirmation of  
9 the plan. Section 1129(a)(5)(A)(ii) requires that the service of such individuals be “consistent  
10 with the interests of creditors and equity security holders and with public policy.” *In re Drexel*  
11 *Burnham Lambert Grp., Inc.*, 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992) citing *In re Apex Oil*  
12 *Co.*, 118 B.R. 683, 704–05 (Bkrtcy.E.D.Mo.1990) (§ 1129(a)(5)(A)(ii) is satisfied where  
13 debtors as well as creditors' committee believe control of entity by proposed individuals will be  
14 beneficial). This provision was designed “to insure the creditors and stockholders a  
15 management faithful to its trust and able to perform its duty so that the reorganized company  
16 may operate as a successful economic unit,” *In re Spectrum Arena, Inc.*, 340 F. Supp. 794, 802  
17 (E.D. Pa. 1971), aff'd, 462 F.2d 156 (3d Cir. 1972).

18 In addition, section 1129(a)(5)(B) requires a plan to disclose the identity of any  
19 “insider” to be employed or retained by the reorganized debtor and the “nature of any  
20 compensation” for such insider. *In re Apex Oil Co.*, supra, 118 B.R. at 704–05 (§  
21 1129(a)(5)(B) is satisfied where plan fully disclosed that certain insiders will be employed by  
22 reorganized debtor and the terms of employment of such insiders).

23 The Debtors' Plan proposes to allow the Debtors' current owners to freely manage the  
24 operations in their "sole discretion." (Plan, p. 39). This includes authorization to enter into  
25 leases and other agreements with no court approval needed for any post-confirmation  
26 operations. *Id.* at pp. 39-40. The Debtors may also increase the salaries of the owners and/or



1 make distributions to them in their sole discretion so long as it believes it can make  
2 distributions under the Plan. Further, the Debtors can enter into loans or financing  
3 arrangements in their sole discretion.

4 For the reasons set forth above, the Debtors have not properly managed the operations  
5 of the Debtor entities for years. The Debtors just produced the 2019 tax return and it  
6 demonstrates significant escalating losses for these entities. The Debtors are reporting phantom  
7 sales, they have no plan regarding how to change the operations to make them profitable, they  
8 are misrepresenting the value of their wine inventory. The Debtors cannot be relied upon to  
9 successfully operate the Debtors or properly manage farming, production, marketing or sale  
10 operations. The Debtors' Plan fails to comply with section 1129(a)(5)(A)(ii), because the  
11 continuance of the Whitelatches to manage and operate the Debtors is not consistent with the  
12 interests or creditors.

13 The Debtors' Plan also fails to comply with section 1129(a)(5)(B) because it does not  
14 disclose the nature of compensation for the owners. Instead, the Plan would allow the Debtors  
15 to increase or decrease the salary of the owners while also making distributions to the owners  
16 depending on the Debtor's financial performance. This is not a sufficient disclosure of the  
17 insiders' compensation. With no oversight and the ability to operate in its sole discretion, the  
18 Debtors can make whatever post-confirmation payments they want to the owners while  
19 HomeStreet and other creditors wait until December 31, 2021 to see if the Debtor can make a  
20 payment under its Plan. The Debtor's disclosure of compensation violates 1129(a)(5)(B) and is  
21 inequitable as to creditors of the estate.

22 E. The Debtor's Plan does not meet the best interests of creditors test (11 USC §  
23 1129(a)(7)).

24 Section 1129(a)(7) requires the plan proponent to demonstrate that a rejecting creditor  
25 will receive at least as much in a chapter 7 liquidation. This means that, absent consent, an  
26

1 impaired creditor must receive property that has a present value equal to its hypothetical  
2 chapter 7 liquidation distribution as of the plan's effective date.

3 In this case, HomeStreet Bank will not receive or retain an amount under the Plan equal  
4 to or more than liquidation value because the Debtors have already failed to meet the  
5 projections attached as Exhibit 1 to the Debtors' Plan. For example, the Debtors projected to  
6 sell grapes to third parties and bring in \$468,000 in revenue in 2020 from such sales; the  
7 Debtors have brought in nothing in grape sales to date. The Debtors will not be generating that  
8 revenue in 2020 and thus, it will be operating at a loss and will not be able to make its plan  
9 payments.

10 The evidence at the confirmation hearing will demonstrate that the Debtors' Plan is  
11 simply not feasible, as discussed below, and its creditors will reap more from a sale of the  
12 properties by a chapter 7 trustee than it would by waiting for payment from a failing operation.

13 F. The Debtor's Plan is not feasible.

14 Under code section 1129(a)(11), the court must determine if the Debtor's Plan is  
15 feasible by independently evaluating its terms to assess whether it offers a reasonable  
16 probability of success. See, e.g., 11 USC § 1129(a)(11); *Matter of Pizza of Hawaii, Inc.*, 761  
17 F.2d 1374, 1382 (9th Cir. 1985) (explaining that that the purpose of 1129(a)(11) is to  
18 prevent the confirmation of visionary schemes that promise creditors more than the plan  
19 proponent can attain after confirmation); *In re Leslie Fay Cos.*, 207 B.R. 764, 788 (Bankr.  
20 S.D.N.Y. 1997) ("The court must find that the plan is workable and has a reasonable likelihood  
21 of success.").

22 When asked during his deposition what specific steps the Debtors would take to turn  
23 their financial results around, Mr. Whitelatch stated that there was nothing that the Debtors  
24 would be doing differently; rather, they would just be "working harder" doing the same things.

25 When a plan proponent proposes to fund a plan from "operating revenue," then its  
26 financial performance is "probative of feasibility," including the business' performance during

1 the bankruptcy proceeding. See, e.g., *In re Merrimack Valley Oil Co., Inc.*, 32 B.R. 485, 488  
2 (Bankr. D. Mass. 1983), *In re Northern Protective Services, Inc.*, 8 B.C.D. 1363, 19 B.R. 802  
3 (Bkrtcy.W.D.Wash.1982). In conducting its feasibility analysis, “[i]ncome projections  
4 indicating financial progress must be based on concrete evidence of financial progress, and  
5 must not be speculative, conjectural or unrealistic predictions.” *Id*; *In re Stuart Motel, Inc.*, 8  
6 B.R. 48, 247 B.C.D. 54 (Bkrtcy.S.D.Fla.1980).

7 The Debtors' Plan is not supported by historical records. The Debtors have lost money  
8 and had escalating losses year over year since 2016. Their revenues for both grapes (non-  
9 existent) and wine (grossly overstated) are dismal in this bankruptcy proceeding. As of  
10 September 30, 2020, according to their financial reports, Claar is under budget in income by  
11 over \$250,000. When you take out the nonexistent Naked Winery "sales" of \$119,000, Claar is  
12 actually under budget by \$369,000 plus. The Debtors may contend that Claar's profits are  
13 positive, but that is only because it has not make vintage fruit payments to RC Farms.  
14 Currently, there are no historical projections upon which any party can rely for purposes of  
15 analyzing feasibility.

16 G. The Plan is not fair and equitable to HomeStreet.

17 Absent a sale of the Circle Ground in the next year, the Debtors are not proposing to  
18 make any payments to HomeStreet Bank until December 31, 2021. If the Debtors do sell the  
19 Circle Ground within a year, and they make a payment to HomeStreet, then the Debtors do not  
20 propose to make another plan payment to HomeStreet until December 31, 2022. That means  
21 that if the Circle Ground sold in January of 2021, HomeStreet has to wait two years for any  
22 payment from the Debtors under their Plan. That is not fair and equitable. That would  
23 effectively give the Debtor two years to operate without making any payment to HomeStreet -  
24 during which time, the Debtors would be free to compensate and make distributions to their  
25 principals. The payments are also based on a twenty-five (25) year amortization. As a result,  
26 the Debtors are proposing a balloon payment to HomeStreet Bank at the end of five (5) years

1 based on speculation and the hopes of making a profit. Additionally, the payment they propose  
2 to make to HomeStreet from the sale of the Circle Ground does not provide HomeStreet the  
3 adequate protection lien it was promised because the diminution in value of HomeStreet's  
4 collateral is significantly more than the proposed \$148,000 payment.

5 The Debtors also proposes a forty-five (45) day cure period on any default after written  
6 notice is received. This is excessive, especially considering the fact that the Debtors are only  
7 proposing annual payments. The Debtors have twelve (12) month periods to prepare to make  
8 payments to creditors, yet it is proposing to have another forty-five (45) after receiving written  
9 notice of default. This is inequitable and prejudicial to HomeStreet. The Debtors have not  
10 provided any justification for this type of cure period.

11 Last, the Debtors offer minimal reporting to HomeStreet. The Debtors' failure to  
12 comply with this court's order regarding the review of financial statements by the independent  
13 CPA, its overstatement of inventory amounts throughout the case and its over-reporting of sales  
14 do not justify allowing this level of control for the Debtors. The Debtors would like to operate  
15 with no oversight or accountability. For all of the reasons discussed herein, the Debtors' Plan is  
16 not fair and equitable.

17 H. The Debtor's Plan fails to satisfy the absolute priority rule (11 USC §1129(b)(2)).

18 The absolute priority rule requires that the debtor's plan pay creditors before equity be  
19 allowed to retain their interests. *In re Armstrong World Indust. Inc.*, 432 F3d 507, 512 (3d Cir  
20 2006); *In re Bonner Mall P'ship*, 2 F.3d 899 (9th Cir. 1993). It is plain under the Debtor's Plan  
21 that the current owners retain their equity ahead of payment to all creditors in this case without  
22 contributing anything money (Plan, p. 35). While a debtor in chapter 11 may be allowed to  
23 retain equity interests, unless the debtor is making 100% payments to all creditors, the equity  
24 holder must contribute new value sufficient to compensate creditors for that retention, not just  
25 through continued management, but with money or money's worth. *Case v. Los Angeles*  
26 *Lumber Co.*, 308 US 106, 122 (1939) ("[t]he stockholder's participation must be based on a

1 contribution of money or money's worth, reasonably equivalent in view of all of the  
2 circumstances to the participation of the stockholder").

3 In this case, the Debtors, without sufficient information, with failed projections to date,  
4 with a lack of any real funds, with no plans to turn things around, an unwillingness to sell or  
5 take any substantive efforts to sell the properties and a stubborn overinflated sense of what the  
6 operations are worth, the Debtors simply state that their plan will pay creditors 100% of their  
7 claims. Such a statement is, in the words of Justice Douglas, "ephemeral" and constitutes  
8 "vague hopes or possibilities." *Id.* To allow the Debtors in this case to assert, without any  
9 support, that it will be able to make full payment to the creditors in this case and retain its  
10 interests for continued management, and indeed, be allowed to increase compensation to the  
11 owners, with no oversight, would be an "easy evasion of the principle of full or absolute  
12 priority." *Id.*

13 Yet, the Debtors propose to make no payments or contribute any funds to retain their  
14 equity in the Debtors. The Debtors' plan is not confirmable as a result under the absolute  
15 priority rule.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

## 22 CONCLUSION

23 Based on the foregoing, the court should deny confirmation of the Debtors' Joint Plan of  
24 Reorganization.

FOSTER GARVEY P.C.

By: /s/ Tara J. Schleicher

Tara J. Schleicher WSBA # 26884  
Jason M. Ayres, WSBA #39141  
121 SW Morrison St., 11th Fl  
Portland, OR 97204  
tara.schleicher@foster.com  
(503) 228-3939

HOMESTREET BANK'S OBJECTION TO THE  
CONFIRMATION OF DEBTORS' JOINT PLAN OF  
REORGANIZATION - 14

FOSTER GARVEY P.C.  
618 West Riverside Avenue, Ste 300  
Spokane, Washington 99201  
(503) 228-3939

**CERTIFICATE OF SERVICE**

I hereby certify on October 19, 2020, I electronically filed the foregoing HOMESTREET BANK'S OBJECTION TO THE CONFIRMATION OF DEBTORS' JOINT PLAN OF REORGANIZATION with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

- Jason M Ayres jason.ayres@foster.com, kesarah.rhine@foster.com
- Roger William Bailey roger.bailey.attorney@gmail.com, diane.pearson.bblawfirm@gmail.com;brooke.maloney.bblawfirm@gmail.com
- Michelle M Bertolino , kmuir@fwwlaw.com;bcurren@fwwlaw.com;jkochubey@fwwlaw.com;mgreen@fwwlaw.com;amckinney@fwwlaw.com
- Donald A Boyd dboyd@hummerboyd.com, kvoelker@hummerboyd.com
- Joshua J Busey joshua.busey.attorney@gmail.com, diane.pearson.bblawfirm@gmail.com;brooke.maloney.bblawfirm@gmail.com
- Gary W Dyer Gary.W.Dyer@usdoj.gov
- Robert Guite rguite@sheppardmullin.com
- Metiner G Kimel mkimel@mkimellaw.com, roberta@mkimellaw.com;julie@mkimellaw.com;kimelmr89262@notify.bestcase.com
- Toni Meacham ToniPierson@RocketMail.Com
- Toni Meacham ToniPierson@RocketMail.com
- Bruce K Medeiros bmedeiros@dbm-law.net, sabrahamson@dbm-law.net;cnickerl@dbm-law.net;tnichols@dbm-law.net
- Kevin ORourke kevin@southwellorourke.com, tina@southwellorourke.com
- Trevor R Pincock tpincock@lukins.com, mlove@lukins.com
- Steven H Sackmann steve@sackmannlaw.com, sackmannlaw@hotmail.com
- Tara J. Schleicher tara.schleicher@foster.com, kesarah.rhine@foster.com
- US Trustee USTP.REGION18.SP.ECF@usdoj.gov

DATED this 19th day of October, 2020.

FOSTER GARVEY PC

/s/ Tara J. Schleicher

Tara J. Schleicher WSBA # 26884